heartbeat away" statement allegedly made by petitioner directly followed a conversation initiated by Oglesby after Oglesby had returned from a visit with a friend of petitioner. Petitioner allegedly delivered the note to Oglesby directly in response to Oglesby's comment to petitioner that petitioner's co-defendant "Blacky was on the streets and free." Shortly after delivering the note to Oglesby, petitioner allegedly went to Oglesby and made additional incriminating statements concerning Blacky. This conversation pertaining to Blacky occurred three or four meetings after Oglesby provided Fitzgerald with the first information pertaining to the escape.

34. Oglesby acknowledged that many of the conversations he had with petitioner were "dialogues." Oglesby testified that he had at least 30 conversations with petitioner once he had gained petitioner's confidence.

35. George Oglesby was a governmental agent whose testimony was inadmissible. Admission of it was prejudicial because Oglesby testified to a purported confession by petitioner. He was the only witness to testify about a purported plan by petitioner for his violent escape in which civilians and law enforcement would be killed. Absent this evidence petitioner would not have been convicted of sentenced to death.

36. Commencing on May 6, 1992, retired Judge Paul Egly acted as a referee on behalf of California Supreme Court and took evidence on questions posed by the Court. Exhibit "A" to this petition for writ of habeas corpus is a true and correct copy of the findings of the referee.

H.

[Appellate Due Process/ Governmental Misconduct/Fair Hearings]

Petitioner's Fifth, Sixth, Eighth and Fourteenth Amendment right to due process, notice, a fair hearing, the effective assistance of counsel, compulsory process and

non-arbitrary and reliable decision-making were .ated because his 1985 evidentiary hearing was marred by governmental misconduct in the form of a massive failure to disclose relevant, exculpatory evidence; the California Supreme Court based its legal ruling against petitioner on a subsequently decided case which purportedly altered the law, and the 1991-1992 evidentiary hearing was prejudicially marred by witness intimidation which interfered with petitioner right to present evidence.

The following facts among others to be presented after full investigation and discovery support this claim:

1. The facts contained in paragraphs I and G of this petition and are incorporated by this reference.

2. At the first hearing, petitioner, through counsel, litigated the legality of the conduct of law enforcement and informer George Oglesby in obtaining statements that were used against petitioner at his trial. The Referee appointed by the Supreme Court found Oglesby to be a government agent within the meaning of United States v. Henry, 447 U.S. 264 (1980) subsequent to May 25, 1979.

3. At the time of the 1985 evidentiary hearing, the controlling case with respect to whether police and informant conduct violated the constitution was United States v. Henry, 447 U.S. 264 (1980). The issue was whether George Oglesby was a governmental agent and if so, whether trial counsel rendered inadequate assistance in failing to seek exclusion of Oglesby's testimony. The hearing was marred by the presentation of false testimony, by the state's massive failures to disclose material evidence and the state's failure to correct perjured testimony. Petitioner incorporates the facts set forth in claims G and I.

4. Thereafter the United States Supreme Court issued its decision in

Kuhlman v. Wilson, 477 U.S. 436 (1986).

5. In 1988, the California Supreme Court rejected petitioner's challenge based in part on the fact that although a constitutional violation may have existed under Henry, Kuhlman v. Wilson required a different or greater factual showing.

6. If the California Supreme Court is correct, then this retroactive application of subsequent case law to defeat petitioner's challenge without affording him an opportunity to meet the alleged new elements deprived petitioner arbitrarily of his constitutional rights to notice of the controlling rules, to a fair hearing on the conduct of law enforcement and the informer, the effective assistance of counsel at the hearing, and to a reliable, non-arbitrary adjudication of his guilt and sentence determinations.

7. Thereafter, in light of the publicity surrounding the use of informants by Los Angeles law enforcement, particularly the Sheriff's Department, a second evidentiary hearing was ordered solely on the issue of whether George Oglesby was a police informant.

8. Petitioner unsuccessfully sought, but did not receive, an order to show cause or an evidentiary hearing on the issue of whether the government procured false testimony, whether the government violated its duty to disclose material evidence, whether false testimony was in fact presented at petitioner's trial, and whether the government failed to correct perjured testimony.

9. Several former Los Angeles County jail inmates, including Sidney Storch, Leslie White, Steve Cisneros, Larry Montez, and Ferril Mickens were scheduled to testify in support of petitioner's claim that George Oglesby was a police agent. (Although George Oglesby was also scheduled to testify he had a heart attack and died immediately prior to his being transported from the California Training Facility at Soledad.)

10. In early February one of petitioner's lawyers spoke to the California

Department of Corrections personnel responsible for inmate removal and transportation, provided them with the names and prison identification numbers of petitioner, Oglesby, Cisneros, Montez and Mickens, and explained that the witnesses were informants and should not be transported or housed with petitioner. (In fact, the transportation arrangement would have had petitioner, Mickens and Oglesby on the same bus.) The Attorney General is counsel to the Department of Corrections.

11. On February 19, 1992, two weeks before the scheduled start of petitioner's evidentiary hearing, the Attorney General publicly revealed that Sidney Storch had been indicted in April, 1991. The Attorney General discussed the contemplated prosecution in the media.

12. On March 3, two days before the actual start of petitioner's evidentiary hearing, the Attorney General announced the arrest and indictment of Leslie White.

13. As a direct result of this action Sidney Storch and Leslie White were rendered unavailable as material witnesses. Also, as a direct result of this action, Montez, Mickens and Cisneros stated they would not testify on petitioner's behalf because of fear of reprisals given that they were still in the custody of the state or county. After his release and long after the hearing, one of these potential witnesses contacted petitioner's counsel and offered to testify now that he was not in danger of state retaliation.

14. The state's action deprived petitioner of crucial relevant testimony at the evidentiary hearing. In summary, two of the potential witnesses were housed in the county jail at the same time as petitioner and Oglesby and were well aware of the methods used by the sheriff's deputies who were responsible for handling Oglesby and petitioner, to circumvent a defendant's right to counsel, including the manipulation of cell assignments to get information from targeted inmates and the provision of information by the sheriff's

department to informants. One of these witnesses occupied a cell direct adjacent to petitioner.

15. In light of the witnesses' fear of reprisals, petitioner's counsel sought use immunity for these witnesses from the hearing referee. Counsel's motion was denied.

16. The state's intimidation of these witnesses was successful. Neither the referee nor the California Supreme Court took any ameliorative action to safeguard petitioner's rights to compulsory process, a full and fair hearing, and a reliable determination of the facts. None of these crucial witnesses testified. Petitioner was thereby deprived of a fair hearing by the state and by gross prosecutorial overreaching.

I.

[Brady/Governmental Misconduct/ False, Unreliable Evidence]

Petitioner's conviction and death sentence were obtained in violation of the Sixth, Eighth and Fourteenth Amendment rights to compulsory process, a fair trial, a reliable guilt and penalty determination in that the state presented false testimony, failed to correct false testimony, presented knowingly perjured testimony and failed to disclose material, potentially exculpatory and impeaching evidence.[5]

In addition to the violations of petitioner's rights to a fair trial, to the assistance of counsel, to confrontation and to compulsory process, and to a reliable, non-arbitrary guilt and penalty determination alleged herein, revelations involving the Los Angeles County Jail, the Los Angeles district Attorney's Office, the Los Angeles Sheriff's Department and the Los Angeles Police Department suggested that further infringements on these rights

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[5] See also, Napue v. Illinois, 360 U.S. 264 (1959); Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); Johnson v. Mississippi, 486 U.S. 578 (1990); Brown v. Brog, 951 F.2d 1011 (9th Cir. 1991); United States v. Kojayan, 8 F.3d 1315 (9th Cir. 1993); United States v. Young, 17 F.3d 1201 (9th Cir. 1994); Sanders v. Sullivan, 863 F.2d 218 (2nd Cir. 1988); Sanders v. Sullivan, 900 F.2d 601 (2nd Cir. 1990).

than are now fully known occurred.

The following facts, among others to be presented after adequate funding, full investigation and discovery, support the claim:

1. The facts set forth in paragraphs E, F, G, and H of this petition are incorporated herein by this reference.

2. In the fall, 1988, Los Angeles County Jail inmate and informer Leslie White demonstrated to representatives of law enforcement and the media the ease with which an inmate could provide an alleged confession by another inmate without ever talking with that inmate about his case and the ease with which a jailhouse informer may fabricate evidence generally. He further provided examples of cases in which false testimony had been provided.

3. This demonstration led to numerous other revelations and information calling into question the legality and propriety of the conduct of the prosecutor's office, sheriff's department, police department and other law enforcement personnel in Los Angeles County from 1978 to the present. See Exhibit 35 of Petition for a Writ of Habeas Corpus, filed in the California Supreme Court on January 9, 1989.

4. In response, the Los Angeles District Attorney's Office began a review and alteration of its policies, and assembled a list of cases in which jailhouse informer testimony was used by the prosecution.

5. That list was published by the Los Angeles Daily Journal on Tuesday, January 1, 1989. Petitioner's case was on that list.

6. On December 15, 1988, Los Angeles Superior Court Judge Richard Byrne issued a protective order requiring the sheriff's department to preserve all relevant jail records between 1977 to the present. On December 16, 1988, the District Attorney's

Office stipulated that it would be bound by a similar order.

7. Had trial counsel, as a reasonably competent counsel acting as a zealous advocate, known of the information that has recently come to light about the informer problem in the jail and the practices of law enforcement in securing jailhouse informer testimony, he would have challenged the testimony of George Oglesby on due process grounds in addition to the California Evidence Code section 352 grounds on which his objection was made.

8. In 1989, after petitioner's execution date came and went, his counsel learned for the first time that valuable impeaching evidence existed and had been in the possession of the state and its agents since 1981. The Office of the District Attorney provided, for the first time, a tape made in January, 1979 of an interview with Leslie White in which he made specific allegations concerning the lack of veracity of George Oglesby, a key prosecution witness in this case.

9. The January, 1979 tape reveals that Oglesby falsified testimony in other cases and that the false testimony had been procured by Sheriff's Lt. Fitzgerald.

10. As a result of receipt of this information, petitioner's counsel met with Leslie White in March, 1989 at the Los Angeles County Jail. There, White disclosed that George Oglesby was his "foster father," that he had been released by a court to Oglesby's care and that the two of them had often discussed how to obtain information to fabricate confessions by prisoners.

11. As a result of the belated governmental disclosure, petitioner's counsel learned from White that Oglesby had put a story together about confessions and admissions allegedly made by petitioner when the two were incarcerated in high power. Oglesby told White that he had gotten the "stupid nigger" to draw a map to incriminate

him in connection with the escape plan which Oglesby was manufacturing in an attempt to reduce Oglesby's first degree murder charge.

12. Oglesby told White he was told by Sgt. John Allender to "go in there and get information" regarding petitioner. Oglesby received details of the investigation of petitioner from Lt. Fitzgerald. Oglesby committed perjury in another case, People v. Bracero. That case and testimony had been used by the state in petitioner's evidentiary hearing in 1985 as demonstrating the reliability of George Oglesby.

13. Had the state not suppressed this evidence, it would have been available to petitioner's counsel at trial to seek exclusion of Oglesby's testimony and to impeach Lt. Fitzgerald and Sgt. Allender. It would have been available to impeach Oglesby. The jury would have disbelieved Oglesby and law enforcement.

14. Still later, on June 13, 1989, petitioner's counsel received a copy of another tape for the first time. This tape disclosed that Leslie White and George Oglesby concocted a scheme to accuse falsely another person of murder as a means to procure Mr. White's freedom from jail. Oglesby was to receive payment for his participation. Law enforcement had not previously disclosed this tape. It was made on March 19, 1978, and therefore was available and in the possession of law enforcement at the time of petitioner's trial. Had it been disclosed, counsel would have similarly used its contents to impeach prosecution witnesses.

15. Petitioner became aware for the first time during these proceedings that in 1981, a Los Angeles County prosecutor in another case received information from George Oglesby concerning a purported confession by the defendant in that case, People v. Joe Morgan, Los Angeles Superior Court No. A355840. Prosecutor (now Judge) Dennis Choate declined to use Oglesby because Choate did not believe him. According to Judge

Choate, Oglesby was a father figure to Leslie White and probably taught White the business of being a jailhouse informant.

16. Had this information been available to petitioner's counsel, he would have been able to successfully suppress Oglesby's testimony, or minimally to totally destroy his veracity as a witness before the jury.

17. Had the information about the pattern and practice of the investigating officers in this case been available, counsel would have been able to wholly undermine not only their testimony and the testimony of George Oglesby, but also the testimony of those other informants in this case -- the Garretts, Coleman, Coward -- who had dealings with the same investigating officers. The result of petitioner's trial would have been different because he would not have been convicted.

J.

[IAC/Governmental Agent]

Trial counsel rendered ineffective assistance of counsel in violation of petitioner's Sixth and Fourteenth Amendment rights when he unreasonably failed to object or move to suppress the testimony of George Oglesby under the Sixth Amendment. This failure substantially prejudiced petitioner.

In addition, the following facts, among others to be presented after full investigation and discovery support this claim:

1. Those facts set forth in paragraph G of this petition are hereby incorporated by this reference.

2. Trial counsel did no legal research on the Sixth and Fourteenth Amendment issue presented by the Oglesby testimony and was unfamiliar with United States v. Henry, 447 U.S. 264 (1980) at the time of trial.

3. Trial counsel did little or no factual investigation to determine the

viability of a challenge to the evidence upon Sixth and Fourteenth Amendment grounds.

4. Trial counsel did not file a discovery motion or otherwise inquire of the State's representatives to determine the factual viability of a challenge to the Oglesby evidence on Sixth and Fourteenth Amendment grounds.

K.

[Lack of Miranda Warnings by Governmental Agent]

Petitioner was denied his 5th and 14th Amendment rights against self incrimination by the admission of the testimony of jailhouse informer George Oglesby including admissions and confessions which were the product of interrogation by this police agent without benefit of Miranda warnings. This error substantially prejudiced petitioner.

The following facts, among others to be presented after full investigation and discovery further support this claim:

1. Those facts set forth in paragraph G of this petition and are incorporated by this reference.

2. At all times that Oglesby and petitioner spoke Williams was incarcerated and in custody.

3. Frequently petitioner was 'interrogated' by Oglesby with the design of eliciting incriminating statements from petitioner.

4. The interrogation by Oglesby was undertaken as an agent of the police.

5. At no time was petitioner provided with warnings required by Miranda v. Arizona 384 U.S. 436 (1966).

L.

[IAC-Miranda Warnings by Governmental Agent]

Trial Counsel rendered ineffective assistance of counsel in violation of petitioner's 6th and 14th Amendment rights when he unreasonably failed to move to suppress the

testimony of George Oglesby under the 5th Amendment. This failure substantially prejudiced petitioner.

The following facts, among others to be presented after full investigation and discovery support this claim:

1. Those facts set forth in paragraphs G, J and K of this petition are incorporated by this reference. In addition,

2. Trial counsel did no legal research on the Fifth and Fourteenth Amendment issue presented by the Oglesby testimony.

3. Trial counsel did little or no factual investigation to determine the viability of a challenge to the evidence upon 5th Amendment grounds.

4. Trial counsel did not file a discovery motion or otherwise inquire of the State's representatives to determine the factual viability of a challenge to the Oglesby evidence on 5th and 14th Amendment grounds.

M.

[Informant Instruction]

Petitioner was denied his right to due process of law and a fair trial under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution by the trial court's failure to sua sponte instruct the jury that the testimony of informers should be viewed with suspicion and distrust and is inherently unreliable. In a capital case due process and the right to a reliable guilt and death determination requires such an instruction. This error substantially prejudiced petitioner.

The following facts, among other to be presented after full funding, investigation and discovery further support this claim:

1. Those facts contained in paragraphs E, F, G, and I of this petition which are incorporated herein by this reference.

2. The evidence against petitioner in this case came primarily and substantially from the mouths of informers (both in and out of custody) and accomplices. The informers or accomplices who testified were: (a) George Oglesby; (b) James Garrett, RT 1648-1839; (c) Esther Garrett, RT 1899-1934; (d) Alfred Coward, RT 2093-2260; and (e) Samuel Coleman, RT 1553-1641.

3. Jailhouse informers and criminal informers generally have been universally recognized by the California judiciary as those whose information should be viewed with suspicion because they are "generally motivated by something other than good citizenship." See People v. Smith, 17 Cal.3d 845, 850-851 (1976); People v. Schmidt, 102 Cal.App.3d 172, 178 (1980).

4. The omission of an instruction -- similar to that provided in federal court prosecutions -- that the testimony of the informers in this case was to be viewed with distrust and suspicion and was unreliable, rendered the trial so fundamentally unfair and the results so unreliable as to deny petitioner his constitutional rights.

N.

[Purported Escape Evidence/ Misleading Instructions]

Petitioner's Fifth, Sixth, Eighth, and Fourteenth Amendment rights to the presumption of innocence, conviction upon proof beyond a reasonable doubt, to the enforcement of vested state-created rights, and to a guilt and penalty verdict based on reliable (not speculative), accurate (not misleading) information were violated by the introduction of evidence of a purported escape plan and misleading instructions which erroneously informed the jury that the evidence qualified as an attempted escape so it could be considered in determining guilt, and erroneously permitted the jury to use this evidence as statutory aggravating evidence during the penalty phase.

The facts, among others to be presented at an evidentiary hearing, which support this claim are:

1. During the guilt phase of petitioner's trial, over objection, the prosecutor was permitted to present testimony of George Oglesby concerning an alleged plan of escape, purportedly designed by petitioner.

2. The evidence was admitted as consciousness of guilt and the jury was permitted to use it in deciding petitioner's guilt.

3. The prosecutor erroneously labelled the purported escape plan as an attempted escape and argued that it showed a consciousness of guilt. The prosecutor also argued that an innocent person would not attempt an escape and that the "attempt to escape" showed that petitioner was guilty.

4. The instructions delivered to the jury erroneously and prejudicially referred to the map and the purported grandiose plan to hijack and blow-up a transportation bus as an attempted escape.[6]

5. Under the mandatory provisions of state statute, only relevant evidence is admissible, see Cal. Evid. Code §350, and evidence of consciousness of guilt tending to prove guilt is only relevant if it occurs immediately after the crime and consists of flight. See CALJIC No. 2.52. The purported plan here was neither.

6. Nor did the plan constitute an attempted escape under state law. Under state law two elements are necessary to establish an attempt: a specific intent to commit a crime and a direct ineffectual act done towards its commission. Preparation alone is not

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[6] The instruction told the jury that "The attempted escape of a person after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but it is a fact which, if proved, may be considered by you in the light of all other proved facts in deciding the question of his guilt or innocence. The weight to which such circumstance is entitled is a matter for the jury to determine." CT 462.

enough. Some appreciable fragment of the crim. must be committed and it must be in such progress that it will be consummated unless interrupted by circumstances independent of the alleged perpetrator. Neither of these elements was met.

7. During the guilt phase the jury was mislead into believing petitioner had attempted an escape and was erroneously allowed to use this as proof against petitioner, thereby unconstitutionally lightening the state's burden of proof.

8. During the guilt phase that were permitted to consider the purported plan as akin to flight immediately after the crime, when in fact, it was not flight and also lacked temporal proximity to the crime. The evidence and inferences to be drawn were speculative and unreliable. Petitioner's guilt verdicts must be set aside.

9. During the penalty phase, the jury was impermissibly allowed to consider the plan as an aggravating factor under California Penal Code section 190.3(b) (the presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence). Only evidence relevant to a statutory aggravating factor is admissible in California. To fall within this aggravating factor the evidence must constitute a violation of the California Penal Code. State law gave petitioner a vested liberty interest, protected by the due process clause of the Fourteenth Amendment, in having this mandatory state law enforced. It was violated by the admission of the purported escape plan, by the instruction labelling the plan an attempted escape and by the instruction informing the jury that it shall consider all of the evidence received in any part of trial in determining whether any of the factors, including factor (b) set forth in Cal. Penal Code §190.3 were present. The instructions were impermissibly vague in that the jury was not provided with any definition of an "attempt" or attempted escape.

10. These instructions and the admission of this evidence extinguished a mitigating factor and wrongly provided evidence of an aggravating factor. Thus, the jury considered an improper aggravating factor. The mandatory weighing formula rendered California a "weighing state" and there was no attempt by the California Supreme Court to assess the harm on appeal.

11. Petitioner's sentence must therefore be set aside.

O.

[Mens Rea/Special Circumstances]

Petitioner's death sentence and the special circumstance were obtained in violation of petitioner's Sixth, Eighth, and Fourteenth Amendment rights to due process, to a jury determination of proof beyond a reasonable doubt, to his vested state entitlement to a jury trial, to the effective assistance of counsel, to notice of the charges against him, to present a defense, to a reliable and accurate death-eligibility determination, to be free of cruel or unusual punishment, to death eligibility criteria that were not void for vagueness, to equal protection of the laws, and to be free of the ex post facto effect of laws which enlarge criminal liability in that the trial court failed to adequately instruct the jury that petitioner had to specifically intend to kill the victim before the special circumstance could be found to be true.

The facts which support this claim are:

1. Petitioner was tried under death penalty legislation which became effective in November, 1978. A portion of that statute, California Penal Code section 190.2, set forth the "special circumstances" which, under state law, made petitioner eligible for the death penalty. The relevant portion of Penal Code section 190.2 did not change between 1978 and 987.

2. Under Cal. Pen. Code § 190.2, the jury had to find beyond a reasonable

doubt that petitioner intended to kill the victim, whether or not he was the actual killer or an aider and abettor to the charged crimes. That the statute included such a mens rea requirement and that the drafters intended such a requirement to exist was made clear by the California Supreme Court in Carlos v. Superior Court, 35 Cal.3d 131, 197 Cal. Rptr 79 (1983), while petitioner's case was pending on automatic appeal and not final.

3. Although the mens rea requirement was included in the statute, at the time of petitioner's trial in 1981, the statute was vague, ambiguous, and provided no notice to petitioner or his counsel or the jury that intent to kill was a crucial element of special circumstances liability. As a result, trial counsel was not on notice and did not consider a mens rea defense to the special circumstance allegations.

4. The trial judge did not inform the jury of this intent element and they were not so instructed. The jury did not know of this requirement and was not directed to make such a finding unanimously and beyond a reasonable doubt. The jury did not make any such finding and, because of the confluence of instructions in this particular case, there is no way to conclude that such a finding was made beyond a reasonable doubt by the jury in another context.

5. Rather, the court instructed the jury that in order to find the special circumstance of robbery true it must find that the murder was committed while petitioner was engaged in the commission or attempted commission of a robbery or that petitioner had been convicted of more than one murder. It also instructed the jury that in order to find the multiple murder special circumstance true, it must be proved that petitioner has been convicted of more than one offense of murder in the first or second degree.

6. In 1987, several years after the crime and trial in this case, the California Supreme Court enlarged a potential capital defendant's criminal liability by rendering him

eligible for the death penalty if he was the actual killer regardless of whether he harbored an intent to kill or any mens rea. People v. Anderson, 43 Cal.3d 1104 (1987). Anderson was applied to petitioner's case. Moreover, no court has determined that petitioner acted with the requisite mental culpability to support a death sentence under Enmund v. Florida 458 U.S. 782 (1982) and Tison v. Arizona 481 U.S. 137 (1987).

7. The prong of Anderson relating to the criminal liability of actual killers cannot be applied to petitioner's case without violating due process. Such a retrospective application of a law which enlarges criminal liability violates the due process proscription against ex post facto application of judicial decisions.

8. The error was prejudicial because an element of criminal liability under state law was wholly removed from the jury's consideration and was never found beyond a reasonable doubt by the fact finder. Petitioner was deprived of his vested mandatory state right to a jury trial (a right protected by the due process clause of the Federal Constitution) and his federal constitutional right to a jury determination of every element by proof beyond a reasonable doubt.

9. Application of Anderson to petitioner's case violates the equal protection clause by depriving him of rights afforded to defendants who were similarly situated with respect to the purpose of the law. It further violates the due process and eighth amendment proscriptions against arbitrary and capricious enforcement of the laws. Between the court's decisions in Carlos and Anderson, the court heard a number of cases in which decisions were issued setting aside the special circumstances under Carlos. Many of these cases involved defendants whose crimes occurred before, after, or during the same time period as those of which petitioner stands convicted. They are similarly situated to petitioner with respect to the law. They received relief while he did not, based solely on

the fortuity of the speed with which their cases were decided in contrast to petitioner's case. Petitioner's case was argued on January 12, 1984 and then reargued on November 6, 1985, May 12, 1986 and June 11, 1987. The state's interest in affording the other defendants relief while denying it to appellant is nonexistent.

P.

[Unconstitutional Jury Composition]

Petitioner's conviction, sentence, and confinement are unlawful and violate the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution (and their state constitutional analogues) in that petitioner was deprived of a fair trial, his right to a jury drawn from a representative cross-section of the community, equal protection and due process of law, as a result of the method by which the jury was drawn in his case, which has been the basis for relief in the cases of other similarly situated defendants. In addition, petitioner was deprived of his constitutional right under the Sixth Amendment to the effective assistance of counsel by counsel's failure to raise the matter earlier.

The facts, among others to be presented after discovery, access to this Court's subpoena power, and the funds necessary to employ appropriate demographic and statistical experts, in support of this claim are:

1. Petitioner, an African-American male charged at trial with killing three Asian-American victims and one Caucasian victim, was tried in the Superior Court for the Southwest Judicial District, located in the City of Torrance.

2. According to the then most recent (1980) census figures, African-Americans made up over 14.3% of the adult (over eighteen years old) population in the Southwest Judicial District, approximately 23% of the adult population within a twenty-mile radius of the courthouse in Torrance, and 11.4% of the adult population in Los Angeles County.

3. These percentages increase if the eligible population is adjusted to eliminate non-citizens and persons with an insufficient command of the English language to sit as jurors. This is so because the African-American population did not include a substantial number of non-citizens or people with insufficient command of English. Taking this variable into account increases the proportion of African-Americans and Caucasians in the jury-eligible population.

4. At the time of petitioner's trial, Los Angeles County obtained potential jurors solely by utilizing the voter registration rolls. Shortly after petitioner's trial began, the county began using multiple source lists and began to draw jurors from a combined list of registered voters and lists maintained by the Department of Motor Vehicles.

5. Petitioner's jury was drawn only from voter registration lists.

6. At the time of petitioner's trial, the jury commissioner's office assigned jurors to a particular courtroom by taking a list of courts that required jurors and proceeding down the list, filling the particular court's requirements by assigning jurors who lived within a twenty-mile radius of the court to that court.

7. Petitioner incorporates the facts set forth in the records and opinions that were before the California Supreme Court in People v. Harris, 36 Cal.3d 36 (1984) [Long Beach judicial district]; People v. Myers, 43 Cal.3d 250 (1987) [Pomona], the proceedings in In re Duncan, S016908 [Southwest Judicial District]; and the opinion in In re Rhymes 170 Cal.App.3d 1100 (1985) [Pomona] as if fully set forth herein.[7]

8. The manner in which petitioner's jury was selected was unconstitutional

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[7] Because petitioner has to date lacked subpoena power and other discovery tools, and because he lacks the necessary funds to prepare analogous in-depth studies, taking judicial notice of these facts and records for purposes of pleading his cause of action at this stage in the proceedings is appropriate.

and resulted in the denial of his right to a jury drawn from a representative cross-section of the community. The constitutional defect in the Los Angeles jury selection process identified herein was well-known and the subject of litigation at the time of petitioner's trial. Denial of relief afforded to other similarly situated capital and non-capital defendants will violate the Eighth Amendment and petitioner's right to the equal protection of the laws.

9. The questionable constitutionality of the manner in which juries were drawn in Los Angeles County was well-known at the time of petitioner's trial and the system was already under attack in a number of criminal cases including Harris, Myers and Rhymes.

Q.

[Mitigating Sentencing Evidence]

Petitioner's conviction, sentence, and confinement are unlawful and violate the Fifth, Sixth, Eighteenth, and Fourteenth Amendments because petitioner's rights to a fair trial, effective assistance of counsel, a reliable penalty verdict, and due process were violated in that the jury was precluded from hearing substantial mitigating evidence, relevant to factors (a), (d), (h), and (k) of California Penal Code section 190.3 as a result of counsel's failure to investigate and present lay and expert mitigating evidence of petitioner's familial, cultural and community background, the environment in which petitioner was raised, his mental vulnerabilities, his drug abuse and its causes, and psychiatric history. This failure was prejudicial as the evidence would have given the jury an otherwise unknown context in which to assess petitioner's moral culpability and would have led to a verdict of life imprisonment instead of death. In addition, presentation of the evidence set forth below would have mitigated the effect of the escape and threats evidence admitted during the guilt phase that the prosecutor used in aggravation in arguing

to the jury that petitioner should be sentenced to death. Counsel's failure to mitigate the aggravating evidence was similarly prejudicial.

Alternatively, if trial counsel was not ineffective in failing to investigate and present this evidence, petitioner is nonetheless entitled to habeas corpus relief because his death verdict is unreliable; this evidence so clearly changes the balance of aggravation and mitigation that its presentation would have altered the verdict and it qualifies as newly discovered evidence.

Evidence of petitioner's cultural, environmental, and family background, and his serious, documented mental impairments and disabilities was prejudicially withheld from the jury and requires that the death verdict be set aside.

The facts, among others, to be presented after discovery and access to the Court's subpoena power, supporting this claim are:

Family Background and History

1. Petitioner hereby incorporates those facts set forth in paragraphs A and D, ante. In addition, petitioner hereby relies upon the exhibits filed in In re Stanley Williams, California Supreme Court No. S011868, and In re Stanley Williams, California Supreme Court No. S039285. Together the facts set out therein provide powerful mitigating evidence of petitioner's family and background which was readily available and should have been presented to the jury.

2. Petitioner's mother, Ceola Williams, was the fourteenth of sixteen children born to Eunice Pierce Lee and Charles Lee. Mrs. Williams was born in 1934 and raised in Louisiana. Petitioner's grandparents -- Mrs. Williams' parents -- provided shelter for their children, but not much else: Mrs. Williams and her siblings never received parental guidance, love, or support from either of their parents. In fact, neither Charles

Lee who was a workaholic and rarely home, nor Eunice Lee, who only left the house to go to church and was constantly pregnant and sickly, ever showed any interest in their children.

3. The Lee family was not close and family members showed no concern for the welfare of other family members. One of petitioner's aunts remembers that she learned at a very young age that the Lee children were forced to fend for themselves, because it was every person for her or himself in that family.

4. Petitioner's family history suggests he was genetically vulnerable to an underlying mental disorder. Several of petitioner's aunts exhibited symptoms of mental illness. They all tended to be nervous, paranoid, suspicious, and generally had trouble coping with everyday life. His mother and six of her sisters all suffered from what other family members call a "nervous condition," and they have all been on "nerve medication" at some point in their lives. For many years during her adult life, petitioner's mother took drugs such as stellazine, valium, meprobamate, and lithium to control her severe anxiety and depression.

5. Three of petitioner's maternal aunts were hospitalized due to psychiatric illnesses. Gertrude has been hospitalized many times. She rarely left her house, and she often sat in a darkened, bare house by herself. Petitioner's aunt Dorothy has been mentally ill for a long time. Petitioner's aunt Martha was hospitalized after having suffered a nervous breakdown. She was diabetic and died in the 1960s.

6. Petitioner's mother, Ceola Williams, was known in her family as extremely withdrawn and isolated, both as a child and as an adult. Even in the Lee family -- a family in which people kept to themselves and did not bother with other family members -- petitioner's mother was recognized as quiet, paranoid, secretive, and withdrawn.

Petitioner's father was one of the few people with whom petitioner's mother associated.

7. Petitioner's father, Stanley Williams, Jr., was born to Ellanese Trosclair and Stanley Williams in 1933, the same year the couple married. Ellanese and Stanley never lived together, although they were not divorced until approximately fifty years later when, shortly before Stanley Williams's death, Ellanese obtained a divorce. Stanley Williams severed his relationship with Ellanese shortly after Stanley Jr. was born. Ellanese Williams "snapped" after that, and remained "troubled" until she died in 1990.

8. Due to her mental instability, Ellanese Williams was unable to care for her son, Stanley Jr., and never did. With the exception of a brief stay with his mother, Stanley Jr., was raised by two paternal cousins. In 1939, Ellanese Williams pled guilty to unlawfully and willfully shooting a man with the intent to kill. As a result of this conviction, she served a year in the parish prison. State v. Williams, Parish of New Orleans, Criminal Dist. Ct. #94833.

9. Petitioner's paternal grandfather, Stanley Williams, Sr., was a jazz musician who played in a number of jazz clubs. Petitioner's grandfather left New Orleans for Chicago in the 1950s where he continued working as a jazz musician. Even when he lived in New Orleans petitioner's grandfather rarely saw his son, establishing a pattern that Stanley Jr. later emulated with petitioner.

10. Petitioner's parents met while both attended segregated L.B. Landry High School in Algiers, Louisiana. Petitioner's mother was forced to give up her dream of participating in track and attending college after she became pregnant with petitioner during her senior year in high school.

11. Petitioner's parents were married shortly after Ceola Williams graduated from high school, and five months prior to petitioner's birth on December 29, 1953. They

never lived together except for a brief period while Stanley Jr. was stationed at Castle Air Force Base in Merced, California. In fact one of the women who raised Stanley Jr. was unaware of his marriage to petitioner's mother until well after the fact when Mrs. Williams subpoenaed Stanley Jr. to court for child support. To this day she is unaware Stanley Jr. has two children by Ceola.

12. In 1954, Stanley Jr. started college at Southern University in Baton Rouge, dropped out of college after only a few months, and joined the Air Force in October of the same year.

13. When on leave from the service, petitioner's father and mother reunited long enough for Mrs. Williams to conceive petitioner's sister Cynthia. For a brief period in 1956, petitioner and his mother lived with petitioner's father at Castle Air Force Base in Merced. During this brief stay, Ceola Williams became pregnant with petitioner's sister, Cynthia. Petitioner's mother ended their stay with petitioner's father and returned to New Orleans, because of Stanley Jr.'s abusive behavior.

14. Throughout Ceola Williams' life in New Orleans and well into the late fifties and early sixties, Jim Crow laws were strictly adhered to in Louisiana, insuring that African-Americans in that state would face severe discrimination. African-Americans were forced to attend economically impoverished and segregated schools. The schools available to African-Americans did not adequately prepare their students for higher educational opportunities, and often graduated students who were unable to read and write.

15. Because of the oppressive racial climate in New Orleans, petitioner's mother left Louisiana for California in 1959, when petitioner was five years old. Mrs. Williams wanted to leave petitioner with her mother. She was forced to abandon this plan and instead left her daughter Cynthia behind because, although petitioner and his grand-

mother were extremely close throughout his life, he was too energetic for his grandmother to be his caretaker. Petitioner's grandmother joined Mrs. Williams in Los Angeles a few years later.

16. Petitioner suffered a number of traumatic injuries to his brain as an infant, child, and young teen. When he was a year and a half old he had a seizure and was rushed to the emergency room of a hospital where a spinal tap was performed. He suffered approximately four childhood and early teenage head injuries, at least one of which involved a loss of consciousness.

17. As a result of his hyperactivity, petitioner was referred by his school to the county general hospital for evaluation. No follow-up apparently occurred and despite near-perfect attendance at the grammar schools in which he was enrolled, petitioner's performance began to lag slightly behind his grade level and chronological age.

18. As a child and well into his early teen-age years, petitioner was repeatedly described by neighbors, friends of petitioner family and church personnel as quiet, polite, respectful, well-mannered and well-liked. He was a good athlete, talented in art and a satisfactory student until he was in high school. Petitioner was beloved by children, had a knack for working with them, and frequently babysat. He was perceived by church personnel and members of the church as someone who could be a productive and responsible prisoner if allowed to live. His home life had the appearance of a happy normal one. However, Stanley's friends and relatives recognized that petitioner's mother and his younger sister Cynthia paid little attention to him. His sister treated him with undisguised contempt. Nonetheless, petitioner remained devoted to his mother and very proud of his sister.

19. Petitioner's biological father did not wish to have anything to do with

petitioner. Despite the fact that petitioner often pondered about his father and wanted contact with him, his father, who lived in Oakland, maintained no contact with him. When petitioner was approximately sixteen years old, his mother took him to Oakland to stay with his father. After one dinner in his father's home with his father, his father's wife and two children, and a couple of days at most at a motel, his father dispatched him back to Los Angeles.

20. In junior high school, again pursuant to a referral, petitioner's mother sought mental health help for him. She sent him to a mental health clinic in the neighborhood, where he attended a number of therapy sessions. A friend, who rode his bicycle with petitioner to the sessions, recalled that petitioner needed more than sporadic out-patient treatment. Petitioner's mother believed that something was wrong with petitioner.

21. In mid-to-late junior high school, petitioner began inhaling immense quantities of highly toxic compounds such as well-wood contact cement, a spot remover known as "kryptonite," and a product called "dip 'n' grip." These substances possess both hallucinogenic and disinhibiting properties. During the period petitioner sniffed glue, he often talked to himself and reported visual and auditory hallucinations. He inhaled enormous quantities of these toxic substances.

22. The inhalants petitioner used cause permanent brain damage and functional impairment, including damage to the myelin sheath which covers the brain and which is responsible for transmission of messages in the brain. Petitioner eventually stopped his inhalant use because he began to lose pigment all over his body. One friend recalled petitioner hallucinating as a result of the glue sniffing and other drug abuse and another recalled that petitioner acted only slightly more normal than a mentally ill street

person when he inhaled these substances. At times, however, petitioner's behavior was so erratic that one friend could not tell whether his behavior was due to the glue-sniffing or mental health problems.

23. In his late teens, while confined briefly in a Los Angeles juvenile camp and later in Factor Brookins, in Banning, California, petitioner began to lift weights. Weightlifting became an obsession lasting until shortly before his arrest in 1979. His obsession led him to the use of amphetamines, LSD, and steroids to allow him to lift for longer periods of time and become the most muscular person in the community so that he would be protected.

24. His increasing size was partially responsible for the severe, chronic harassment he suffered at the hands of law enforcement during the 1970s. In addition, while at Factor Brookins, petitioner and other wards at Factor Brookins were the subject of a news article designed to enhance the reputation of the camp's director at the wards' expense. A false portrait of petitioner as a leader and hard core troublemaker emerged.

25. In fact petitioner's actual personality, demeanor, and stature departed radically from his weightlifter's body, the portrait drawn by the news article and the street rumors. Petitioner had tremendous difficulty functioning in an adult world, was dependant on friends, and was neither a leader nor fighter.

26. Petitioner was known to avoid confrontations of all kinds. Petitioner's friends acted as a buffer between him and the outside world by dealing with authority figures for him. Petitioner avoided physical confrontations, to the point of backing down from fights when challenged.

27. In 1974 petitioner began working at the Martin-Shaw Center Home for Boys in Compton, which operated group boys' homes at three locations in Compton. He

was well loved and respected by the wards and others. Petitioner was known for his ability to work with children, and he used weight lifting as a means to bring together kids from rival gangs. The boys' home not only furnished petitioner a job at which he could feel successful, it also gave him a place he considered home.

28. In 1975, petitioner suffered a series of reverses and setbacks which began a several year downward spiral, culminating in his arrest in March, 1979. In October, 1975, petitioner was shot in both legs at night as he sat on the porch of one of the boys' homes. He was hospitalized for several days, put on out patient status for several months, and had a long, difficult recuperation period during which he often hid out at a number of different friends' homes. Early in 1976, petitioner's beloved maternal grandmother died, leaving petitioner to grieve deeply for his loss. Shortly after petitioner recuperated from the gunshot wounds, the Martin-Shaw Center had closed and petitioner had difficulty finding another job. The job which had given him not only a feeling of worth and self-esteem, but also a home was gone.

29. The trauma of his brush with death and continued threats from contemporaries, the perception of constant harassment by law enforcement and the personal losses suffered by petitioner plunged him into a long period of depression punctuated by manic episodes. It also increased his drug abuse, causing him to use tremendous quantities of phencyclidine (PCP) for the first time and to continue his use of windowpane acid. He was smoking up to three and four PCP-laced cigarettes at a time by February and March, 1979.

30. Petitioner's behavior became increasingly erratic and bizarre, both while intoxicated and without the ingestion of drugs. He believed people were out to get him, was found "swimming" naked in a pile of dirt in an alley, leaped out of a car on the

freeway and ran along side of it until he could be coaxed back inside, stripped off all of his clothes and ran naked in the street, lifted up the front end of a car, ran down the street clutching his neck and shouting that he was unable to breathe, laid down in the middle of the street for no apparent reason, and abruptly started spinning around and then dropped to the ground and curled up in a fetal position, crying "No. No. Go away. Don't hurt me." He had no recollection of these incidents after they happened. He became panicky and paranoid that his body was shrinking. Even in the safety of the garage where he lived and worked out, he kept a gun by his side at all times.

31. Petitioner's behavior and moods swung from paranoia, agitation, and irritability to softness, vulnerability and fear. He was child-like and impulsive. His behavior was not only overtly manic or even psychotic at times, but he displayed many of the vegetative signs of depression in the weeks and months prior to his arrest. By the time of his arrest his behavior had become so psychotic and unpredictable that many of his closest friends and daily companions could not spend consistent or prolonged periods of time with him. They were grateful when he was arrested because they thought he would finally receive the sustained psychiatric care and/or drug detoxification they believed he needed.

32. Petitioner's mental state remained poor in the jail. Many of his friends found him to be dazed, unable to sustain a conversation, unable to recognize them at times, and unable to grasp the seriousness of the situation. After petitioner's friend Rossalyn Blanson met George Oglesby and heard that petitioner wanted to be involved in his plan, she was astonished. She perceived the plan to be very strange and George Oglesby to be so unlike anyone petitioner would associate with, that she viewed the association as an indication that petitioner was out of touch with reality. Although

Oglesby tried to get Rossalyn to meet with his girlfriend -- apparently in an attempt to surreptitiously tape record her -- she never had any intention of doing so.

33. Petitioner's mental condition was caused not only or even primarily by his drug abuse. Rather, petitioner suffered from a serious mood disorder, most likely an organic affective (bipolar) disorder. The symptoms described by petitioner's friends, family, and acquaintances as well as his family history are consistent with such a diagnosis.

34. In addition, petitioner suffered from mild generalized brain dysfunction, with substantially more serious damage and neurocognitive deficits in the functioning of the right parietal and temporal lobes and the frontal lobes of the brain. These areas of the brain control the ability to accurately perceive stimuli and factors in the environment, accurately process non-verbal social and emotional cues, plan, organize, reflect, deliberate, carry out a preconceived design, and act reflectively rather than impulsively.

35. All of the foregoing information was readily available to trial counsel at the time of petitioner's trial and is based on interview and evaluation techniques that were recognized as appropriate in the legal, neuropsychological, and psychiatric professional communities at that time as well. Such evidence would have been presented by trial counsel had he been aware of it.

36. The failure to present this mitigation evidence at the penalty phase deprived the jury of crucial evidence regarding petitioner and circumstances extenuating the crime.

37. Trial counsel failed to call a single witness at trial in the penalty phase. At the start of the penalty phase he still had not investigated available mitigating evidence.

38. The potential mitigating evidence was not cumulative; no other testimony was similar in kind to that which counsel unreasonably failed to investigate. The jury was

left with a grossly incomplete and wholly misleading view of petitioner. The jury was instructed to make its penalty decision after weighing the aggravating evidence against the mitigating evidence, but was missing virtually all of the mitigating evidence.

39. Had the information set forth above and in the accompanying declarations and documents been provided to the jury, it would not have sentenced petitioner to death.

R.

[Purported Waiver of Mitigation]

Petitioner's sentence and confinement were unconstitutionally obtained in violation of his Fifth, Sixth, Eighth and Fourteenth Amendment rights to a fair and reliable penalty determination by the factfinder, to the presentation of mitigating evidence which would have informed the jury of petitioner's frailties, to a sentence determination that is not based on misinformation, to an individualized consideration of the nature of the offense and the offender, to the effective assistance of counsel, and to due process, in that the trial court and trial counsel accepted petitioner's purported waiver of mitigation, which was invalid because it was not knowingly, intelligently, and voluntarily entered; accepted petitioner's purported waiver without ascertaining the scope of that waiver; and violated the state's overriding independent interest, protected by the due process clause of the federal constitution, that the jury not be precluded from hearing relevant mitigating evidence, that any death sentence imposed be accurate and reliable, and that rights which exist for the benefit of the People of the State of California may not be waived.

The following facts, among others to be presented after adequate funding, discovery and an evidentiary hearing are:

1. Those facts set forth in paragraphs A, D, and Q concerning petitioner's family and personal background neurocognitive deficits, psychiatric disabilities, drug abuse

history and competence to stand trial are incorp. .ed herein by this reference.

2. Those facts set forth in paragraph Q concerning the readily available evidence that could and would have been presented by reasonably competent counsel acting as a zealous advocate had the trial court and counsel not misperceived the purported waiver and had they fulfilled their constitutional duties concerning the presentation of mitigating evidence are incorporated by this reference.

3. Trial counsel presented no mitigating evidence. He represented to the court that petitioner did not wish to have mitigating evidence produced. Upon inquiry by the trial court, regarding whether petitioner himself wished to testify, petitioner said no. He was not otherwise questioned by the trial court.

4. In fact, petitioner misconceived the scope and nature of relevant, available mitigating evidence and believed that such evidence would consist of the testimony of his mother and stepfather whom he did not want to put through the ordeal of testifying. This was his only directive to counsel. He was otherwise a passive defendant who did not participate in strategy discussions and offered no useful suggestions on legal matters such as witnesses, evidence or defenses. Other than his unwillingness to testify or have his mother or stepfather testify, he put no restrictions on counsel.

5. Counsel did not investigate, and therefore was unaware of the wealth of cultural, familial, mental health, and drug addiction history available as mitigating evidence and therefore could not have attempted to explain to petitioner the full range of available mitigating evidence. Petitioner's purported "waiver" was not only severely limited to two witnesses, but it was unknowingly and unintelligently entered.

6. In addition, petitioner's brain dysfunction and psychiatric presentation would have made and did make any waiver invalid as involuntary, unknowing, and

unintelligent. He was mentally incompetent at the time of trial and the penalty phase. Had counsel investigated petitioner's background, and hired and utilized competent mental health professionals, he would have known that petitioner's state of mind at the time was such that his purported waiver was constitutionally invalid.

S.

[Multiple Murder Special Circumstances]

Petitioner's right to due process of law, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, see, e.g., Hicks v. Oklahoma, 447 U.S. 343 (1980), and his right to an accurate reliable determination of death, guaranteed by the Eighth and Fourteenth Amendments, were violated in the penalty determination at petitioner's trial, because the sentencing jury was improperly authorized to consider the four multiple-murder special circumstances as four factors in aggravation of punishment. The artificial increase in aggravating factors impermissibly inflated the risk that the jury would impose a sentence of death, also violating the Eighth and Fourteenth Amendments. The following facts, among others to be presented after full investigation and discovery, support this claim.

1. The information filed against petitioner charged four multiple-murder special circumstances in connection with the murder counts. Cal. Pen. Code, 190.2, subd. (a)(3); see People v. Williams, 44 Cal.3d 1127, 1133 (1988). At the conclusion of the guilt phase of petitioner's trial, the jury returned verdicts of "true" as to each of these four special circumstance allegations.

2. It is error for a prosecutor to charge four multiple murder special circumstances in a capital case, and it is also error for a jury in a capital case to return four multiple murder special circumstances or to consider four multiple murder special circumstances as four aggravating factors in its penalty deliberations. People v. Harris, 36

Cal.3d 36, 67 (1984); People v. Allen 42 Cal.3d 1222, 1273 (1986). The prosecutor should charge, and the jury should determine the truth of, only one special circumstance in this situation.

3. At the penalty phase of petitioner's trial, the jury was instructed that "you shall consider, take into account and be guided by the applicable factors of aggravating and mitigating circumstances upon which you have been instructed. If you conclude that the aggravating circumstances outweigh the mitigating circumstances, you shall impose a sentence of death." CT 562. (Emphasis Added).

4. The language in subparagraph 3 concerning the "factors of aggravating and mitigating circumstances upon which you have been instructed" was a reference to, and was understood by the jury as referring to, the immediately preceding penalty-phase jury instruction, which enumerated eleven aggravating and mitigating circumstances to be considered, if applicable. CT 559. The first enumerated factor -- factor (a) -- covered the circumstances of the crime of which petitioner had been convicted and also "the existence of any special circumstances found to be true." The second enumerated factor -- factor (b) -- covered "[t]he presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the expressed or implied threat to use force or violence."

5. In his argument to the jury in support of a death sentence, the prosecutor specifically focused the jury's attention on factor (a), explaining that, "As you know, we have four murders so found by your verdict, and we have four sets of special circumstances. You will make individual findings as to each murder and as to the special circumstances associated with that murder." RT 3023. The prosecutor stated shortly thereafter that if "we look at nothing else . . . in itself, anyone [sic] of those murders,

anyone of those special circumstances found to be true, is appropriate to impose the penalty of death." Ibid.

6. The prosecutor's argument also focused the jury's attention on aggravating factor (b), covering "[t]he presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or for [sic] the express or implied threat to use force or violence." RT 3031. The prosecutor indicated that the existence of this aggravating factor was established by the "evidence of the defendant's use of force and violence" in the crimes of which petitioner had been convicted at the guilt phase. Ibid.

7. The prosecutor subsequently told the jury that the mitigating factors were far outweighed by "all of the aggravating factors." RT 3044.

T.

[Mandatory Weighing Instruction]

The jury instructions and prosecutor's argument deprived petitioner of his Fifth, Sixth, Eighth and Fourteenth Amendment rights to a fair, reliable, and individualized penalty decision because the jury was instructed and the prosecutor argued that if the jury found that the aggravating factors outweighed the mitigating factors it "shall" impose death.

The following facts, among others to be presented after full investigation and discovery support this claim:

1. At trial, petitioner's jury was instructed to consider eleven enumerated sentencing circumstances. The jury was further instructed: "If you conclude that the aggravating circumstances outweigh the mitigating circumstances, you shall impose a sentence of death." CT 562. [Emphasis added].

2. One of these sentencing circumstances listed the "circumstances of the crime" and the "existence of any special circumstances" as considerations in aggravation.

3. During the prosecutor's summation at penalty phase, he argued to the

jurors that they were required to impose a death sentence once they determined that aggravation outweighed mitigation. RT 3018-3019. He also argued the existence of any one of the special circumstances made death proper. RT 3031. Further, other prosecutorial remarks exacerbated the unconstitutional elements of the process expressed in the instruction. RT 3023-3044.

4. The instructions did not require, and the jury never made a finding that death was the appropriate penalty under all the circumstances of this case.

5. In a case in which no affirmative mitigating evidence was presented, the instructions reasonably could have made a death sentence appear mandatory to one or more jurors.

6. The instructions and argument violated the petitioner's right to due process and fundamental fairness guaranteed by the Fifth and Fourteenth Amendments. As a reasonable juror could have understood them, the instructions and argument also violated the Sixth, Eighth and Fourteenth Amendments in the following ways:

a. By presuming that death is the appropriate sentence when aggravation is found to outweigh mitigation;

b. By vitiating the requirement of individualized sentencing in a capital trial;

c. By failing to inform the jury that it still had the discretion to impose a life sentence regardless of the existence of aggravating evidence;

d. By restricting the weight and consideration given to mitigating evidence;

e. By making the death sentence mandatory when aggravation outweighs mitigation;

f. By saddling the petitioner with automatic aggravation and a presumption of death

g. By skewing the jury in favor of death and not appropriately channeling jury sentencing discretion;

h. By permitting death sentences to be determined in an arbitrary and capricious manner;

i. By removing from the jurors the sense of ultimate responsibility for determining whether death is the appropriate sentence for the defendant.

U.

[Instruction Restricting Mitigation]

The death penalty was unconstitutionally imposed because the sentencing jury was precluded from giving independent weight to mitigating aspects of petitioner's character and background in violation of petitioner's Eighth and Fourteenth Amendment rights. The following facts, among others to be presented after full investigation and discovery support this claim:

1. Petitioner's jury was instructed to consider eleven specified factors, if applicable, in determining penalty. CT 559-562.

2. The jury was never instructed or otherwise informed by anyone at trial that it could impose a sentence less than death based on any mitigating circumstance or any aspect of petitioner's background called to the jury's attention by the evidence or its observation of the defendant.

3. Instead, the jury was instructed that mitigation could be found only in "any other circumstances which extenuate the gravity of the crime, even though it is not an excuse for the crime." CT 561.

4. The jury was also told, during the guilt phase, that it was "not [to] be

influenced by pity for a defendant" and must not . . swayed by mere sympathy. CT 444. This admonishment was not countermanded in any way during the penalty phase. It was also told at the guilt phase to render a verdict regardless of the consequences. This was not countermanded in any way.

5. A reasonable juror would have been prejudicially misled, and this jury was prejudicially misled to believe that it could return a verdict less than death only if the mitigating circumstances it perceived related to the crime, rather than the crime and the offender.

V.

[Undifferentiated List of Irrelevant Factors]

Petitioner's death sentence was obtained in violation of his Eighth and Fourteenth Amendment rights to due process, to a sentence based on record evidence, to a jury whose discretion was adequately guided and who had notice of the relevant penalty factors, to a reliable and accurate penalty determination and to sentencing factors that were not vague in that the trial court's instructions permitted the jury to consider, and use as aggravating factors, a number of factors having nothing to do with petitioner or the crimes of which he stood convicted and failed to inform the jury whether factors were aggravating or mitigating. This resulted in a death verdict which was the product of an improper inflation of aggravating circumstances and of the jury's consideration of information which had nothing to do with the character and record of the individual offender or the circumstances of the particular case. The following facts, among others to be presented after full investigation and discovery support this claim:

1. The trial court delivered CALJIC No. 8.84.1 to the jury in toto. That instruction read in pertinent part as follows: In determining which penalty is to be imposed on defendant, you shall consider all of the evidence which has been received

during any part of the trial of this case, [except as you may be hereafter instructed]. You shall consider, take into account and be guided by the following factors, if applicable:

a. The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true.

b. The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the expressed or implied threat to use force or violence.

c. The presence or absence of any prior felony conviction.

d. Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

e. Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.

f. Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.

g. Whether or not the defendant acted under extreme duress or under the substantial domination of another person.

h. Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or the affects of intoxication.

i. The age of the defendant at the time of the crime.

j. Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.

k. Any other circumstances which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

(CT 559-561)

2. There was no evidence whatever to support, and petitioner did not rely on mitigating factors (d), (e), (f), (g), (i), and (j) in this case.

3. No instruction told the jury that the absence of evidence on any factor rendered the factor irrelevant and, in fact, the instructions, taken as a whole, allowed the jury to determine that these factors were aggravating ones if no mitigating evidence relevant to these factors was produced. The jury was told it "shall take into account and be guided by" the eleven factors "if applicable" but were given no guidance for now to determine whether a factor was applicable.

4. The inclusion of these inapplicable factors by the trial court in its instructions to the jury allowed the prosecutor to use these irrelevant considerations as the framework for his argument and for his implicit conclusion that the inapplicable factors as aggravation should be considered by the jury in deciding whether aggravating factors outweighed those in mitigation. RT 3023-3044.

5. The instructions did not designate the factors as aggravating or mitigating, thereby rendering them unconstitutionally vague and further allowing the jury to assign aggravating weight to factors designed to be mitigating.

6. The consideration by the jury of factors having nothing to do with the case and the likelihood that the irrelevant factors would be used as aggravating ones, prejudicially violated petitioner's right to a fair and reliable penalty determination and to an individualized consideration of the appropriate punishment for him, especially when combined with the unconstitutional instruction that if aggravating circumstances

outweighed mitigating ones the jury had to return a death verdict.

W.

[Unadjudicated Prior Criminality]

Petitioner was deprived of his constitutional rights under the Fifth, Sixth, Eighth and Fourteenth Amendments because the prosecutor introduced and the jury considered as a factor in aggravation, evidence of alleged violent conduct by petitioner for which he was never charged.

The following facts, among others to be presented after full investigation and discovery, support this claim:

1. At the guilt phase of petitioner's trial, the prosecution introduced evidence of petitioner's alleged involvement in a pretrial escape plan, and of an alleged threat by petitioner to kill an immunized prosecution witness. Petitioner was never charged with, nor convicted of any substantive offense on the basis of such alleged conduct.

2. The prosecution presented the testimony of George Oglesby, a jailhouse informer, who described petitioner's formulation of various plans to escape while being transported to or from pretrial court appearances. As described by Oglesby, the plans included the participation of outside confederates to secure guns and dynamite in order to commandeer and blow up the prisoner transport bus. Oglesby also quoted petitioner as saying that a prosecution witness, Alfred Coward (also known as "Blackie"), was "a heartbeat away from death."

3. The prosecution presented testimony by George Oglesby that petitioner had admitted being responsible for the murder and robbery of a large number of Asians other than the victims in the charged murders.

4. The prosecution presented testimony regarding a charged but dismissed

allegation of kidnapping and robbery.

5. No additional evidence was introduced at the penalty phase. Instead, the jurors were instructed to consider all of the evidence introduced at the guilt phase in determining whether to impose a sentence of death. The jury was not admonished that it should disregard any evidence - even the evidence which related to the dismissed allegations. RT 559.

6. The penalty phase instructions also required the jurors to consider the arguments of counsel and the entire list of sentencing factors contained in California Penal Code, section 190.3, including factor (b): "The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence."

7. The statute did not require, and the trial court did not instruct the jury on either the elements of any alleged violent criminal activity, or the standard of proof applicable to the jury's determination whether petitioner in fact had planned or engaged in a violent escape attempt, had threatened, attempted to kill or planned to kill a prosecution witness, or had engaged in any other violent criminal activity. It did not instruct the jury that it had to find beyond a reasonable doubt that the petitioner committed the prior criminality before using it against petitioner.

8. The statute did not require, and the trial court did not instruct the jury that consideration of other violent crimes as factors in aggravation required a unanimous finding by the jury that petitioner had in fact committed such offenses.

9. On the basis of the evidence submitted by the prosecution in support of the alleged escape plan and threat against a prosecution witness, a rational juror could, and would have entertained a reasonable doubt as to the truth of the allegations.

10. The evidence submitted by the prosecution in support of the alleged escape plan and threat against a prosecution witness was *insufficient*, as a matter of state and federal law, to prove the commission of any criminal offense but a lay juror, unschooled in the law, would not so understand absent instructions.

11. The determination whether petitioner had planned and/or attempted to escape and/or had threatened or attempted to kill a prosecution witness or had killed and robbed a large number of Asians was made by a jury who had just convicted petitioner of four capital murder charges.

12. No written findings were made, nor special verdicts returned by the jury as to the truth of the allegations that petitioner had planned or attempted a violent escape or threatened or attempted to kill a prosecution witness or attempted or committed other violent uncharged or dismissed crimes.

13. The above described procedures violated petitioner's constitutional rights as follows:

a. The death sentence was imposed in violation of petitioner's due process rights and right to an impartial jury because evidence of violent criminality, where such conduct was never charged or never proven, was introduced at his penalty phase trial.

b. The death sentence was imposed in violation of petitioner's Fifth and Fourteenth Amendment rights to be presumed innocent of a criminal offense unless and until his guilt is proven beyond a reasonable doubt because there was never any unanimous determination, beyond a reasonable doubt, that petitioner had planned or attempted to escape or threatened or attempted to kill a prosecution witness, killed and robbed Asians, or robbed and kidnapped the victim identified in the dismissed charges.

c. The death sentence was imposed in violation of the requirement that

capital sentencing proceedings be reasonably designed to avoid unreliable, arbitrary or capricious death judgments.

d. The death sentence was imposed in violation of petitioner's right to due process and the equal protection of the laws as guaranteed by the Fifth and Fourteenth Amendments because of the arbitrary deprivation of petitioner's state constitutional right to a jury trial on all disputed factual issues, including factors in aggravation of sentence.

e. Under California law a defendant is constitutionally and statutorily entitled to a jury trial, requiring proof beyond a reasonable doubt to a unanimous jury, on all issues of fact. See Cal. Const. Article I, section 16, Penal Code section 1042; People v. Najera, 8 Cal.3d 504 (1972); People v. Hernandez, 46 Cal.3d 194 (1988).

f. By permitting consideration of other crimes allegations as factors in aggravation of penalty in the absence of a unanimous finding that such crimes had been proven beyond a reasonable doubt, the instructions arbitrarily deprived petitioner of his state constitutional right to a jury trial.

g. No valid state interest is served by this denial.

14. The death sentence was imposed in violation of petitioner's Fourteenth Amendment rights because petitioner was arbitrarily deprived of the protection of a state rule of law that mandated proof beyond a reasonable doubt as a necessary prerequisite to an individual juror's consideration of evidence of other crimes in aggravation of penalty.

a. Subsequent to petitioner's trial, the California Supreme Court interpreted the law applicable to petitioner's trial to require the trial court to instruct the jury sua sponte that an individual juror must be convinced beyond a reasonable doubt of the truth of other crimes allegations before the juror could consider such evidence in

aggravation.

b. The parties and the trial judge were unaware that this rule of law governed petitioner's penalty trial at the time of trial.

c. As a result petitioner was deprived of the protection of procedures designed to ensure the reliability of "other crimes" evidence which was considered by individual jurors. The deprivation of such protection created a constitutionally impermissible risk that the death judgments were unreliable, arbitrary and capricious. U.S. Const., Amends VIII and XIV.

d. Petitioner's death sentence is also invalid because Penal Code section 190.3, subsection (b) is impermissibly vague under the Eighth and Fourteenth Amendments.

(1) The aggravating factors listed in California Penal Code section 190.3 are meant to guide the jury's discretion in deciding to actually impose the death penalty among the pool of eligible capital defendants. A finding by the jury that the aggravating factors outweigh the mitigating factors is a necessary prerequisite to a decision to impose death. See CALJIC No. 8.84.2.

(2) Factor (b), listed in section 190.3, directs the jury to consider in aggravation "[t]he presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence."

(3) Because the statute does not require instruction, and the trial court did not instruct the jury as to either the discrete criminal offenses they were to consider, or the elements of the alleged offenses, or the standard of proof required to establish such criminality, the lay jurors were free to weigh in aggravation under factor (b)

any of petitioner's alleged conduct which they individually viewed as being criminal.

(4) The result is that the jurors were permitted to apply factor (b) in a wholly arbitrary and capricious manner in violation of the Eighth and Fourteenth Amendments.

X.

[Failure *to* Distinguish Between Present and Prior Crime]

Petitioner's rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to a fair and reliable penalty determination were violated by the Court's instructions and the prosecutor's argument which invited the jury to use the circumstances of the crimes of which petitioner was convicted and the existence of special circumstances as aggravation under both factor (a) of California Penal Code Section 190.3 (facts of the present case) and under factor (b) (other criminal activity involving the use of or threat of force or violence). Alone, and in combination with other errors that overinflated aggravation while extinguishing mitigation, see paragraphs S, U, V, and W, these constitutional violations were prejudicial.

This dual use and double counting was constitutionally impermissible because it violated the Fifth, Eighth and Fourteenth Amendments by denying petitioner a fair and reliable penalty determination and resulted in the arbitrary and capricious infliction of the death penalty. The instruction and argument were prejudicial because they improperly overinflated the aggravating circumstances and extinguished a potential mitigating factor (absence of violent criminal activity apart from the charged crimes). The state cannot prove this error had no effect whatever on the verdict or was harmless beyond a reasonable doubt, especially when combined with the "mandatory weighing formula," see paragraph T, ante, and other constitutional errors relating to evidence of criminal activity, see paragraph W. These additional errors have the effect of so impermissibly stacking the

deck against petitioner that no similarly instructed jury on the evidence here would have returned a life without parole verdict.

The following facts, among others to be presented after full investigation and discovery, support this claim:

1. Those facts alleged in paragraphs S, T, U, V and W are hereby incorporated herein by this reference.

2. The trial court instructed the jury, inter alia, that in selecting punishment it shall consider eleven factors, thereafter enumerated by the court. CT 559. The first two factors were (1) the circumstances of the crimes adjudicated during the guilt phase and the existence of any special circumstances found true Ibid. and (2) the presence or absence of criminal activity involving the use of attempted use of force or violence of threatening the same. Ibid.

3. The prosecutor told the jurors that "the circumstances of the crime of which the defendant is convicted are things that you take into consideration as one of the guidelines, on the factors in determining whether the aggravating factors outweigh or don't outweigh the mitigating factors: "the presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or for the express or implied threat to use force or violence."

"And, of course, here we have overwhelming evidence of the defendant's use of force and violence, almost for their own sake, not because they're necessary, just because he wants to use force and violence." RT 3031.

4. A reasonable juror, hearing the instruction and this argument, could and would conclude that he or she could consider the circumstances of the present convictions as demonstrating the existence of two aggravating factors, that is, factors (a) and (b) as set

forth in the instruction. CT 559.

Y.

[Juror Receipt of Extrinsic Evidence/ Inadequate Trial Court Inquiry]

Juror misconduct, in the form of a misperceived comment by petitioner to his lawyer, which occurred at the conclusion of the guilt phase and just prior to the penalty phase, denied petitioner his due process right to a fair trial, his Eighth Amendment right to a reliable penalty phase verdict obtained solely on the basis of record evidence, and his Sixth Amendment rights to confront the evidence against him and to a fair and impartial jury. Petitioner's Fifth, Sixth, Eighth, and Fourteenth Amendment rights were further denied by the trial court when it refused to inquire whether any juror had discussed the comment with any other juror and whether any jurors' impartiality would be affected thereby.

The following facts, among others to be presented after full investigation and discovery, support this claim:

1. On Friday, March 13, 1981, following the receipt of the jury's guilty verdicts, petitioner asked his lawyer "something to the effect, 'Are those the sons-of-bitches who are going to decide what happens to me.'" RT 3074. The court reporter heard only a portion ("sons of bitches") of the comment, which was directed by petitioner solely to his counsel. RT 2986-U, 3074. The transcript reveals this portion of the comment.

2. Jurors seated in the center of the jury box told other jurors, including an alternate juror, that petitioner said "I'm going to get each and everyone of you motherfuckers." RT 30713078. On the day the penalty jury deliberations began, an alternate juror, (who was obviously not in the jury room during penalty deliberations), told the bailiff the jury believed petitioner threatened them. She said that she did not hear the

comment but that the jurors in the center said petitioner looked at them and said he would get them all.

3. On March 18, 1981, the trial court questioned the other alternate jurors, but mistakenly asked them whether they had heard a comment "today" or whether petitioner directed a comment to them "today." (The alleged comment to counsel had been made on March 13.) All of the alternates said "not today" or "no, nothing today."

4. Petitioner's lawyer asked the court to consider inquiry to the regular panel and to perhaps consider declaring a mistrial. Counsel suggested that if the jurors believed petitioner had threatened them they would lose their impartiality and become advocates who had a stake in the outcome. He was concerned they would base their verdict on something that was misperceived and was not evidence.

5. Instead, the court questioned the alternates and thereafter the fore person. In questioning the fore person, the court learned that a verdict had been reached, that the jury did not discuss the alleged comment as a body until after the verdict had been reached. The fore person had seen petitioner's mouth moving but could not make out the comment; one of the other jurors told him what petitioner allegedly said. The fore person told the court the comment did not play any part in the deliberations. Until questioning the fore person the court was unaware a verdict had been reached.

6. The court then requested that the entire jury be brought in and the court received the verdict. RT 307903081.

7. Petitioner's counsel again asked that individual inquiry be made of each juror out of the presence of the others as to whether the comment was directed to the juror, how the juror heard about it, whether it was discussed among them, and whether it affected the outcome. The trial court and the prosecutor took the position that no further

inquiry was necessary because the fore person sa. .nat the matter was not discussed until after the verdict was returned.

8. The trial court declined to question the juror or jurors who perceived (either visually or aurally) the comment, declined to asked the regularly seated jurors whether they discussed the comment, what they knew, whether it would affect their deliberations, and/or whether they could remain on the jury as far and impartial jurors.

9. The comment was not record evidence and was not directed to the jury, but was part of a conversation between counsel and his client. The only reason that the jury was able to "see" or otherwise perceive the discussion was due to its position in the courtroom.

Z.

[Exclusion of Photographs and Argument]

Petitioner was denied his federal rights under the Fifth, Sixth, Eighth and Fourteenth Amendments, to due process, to produce evidence in his own behalf, to the effective assistance of counsel, and to a reliable penalty determination, by the trial court's ruling precluding him from producing evidence relevant to a critical issue at the punishment phase of trial. In the present case that evidence related to the sentence to be selected.

The following facts, among others to be presented after full investigation and discovery, support this claim:

1. Petitioner sought to introduce photographs of a California execution. The trial court ruled them inadmissible and precluded any reference to them. The court also precluded counsel from describing how executions are carried out at San Quentin. RT 3062-3064.

2. California Penal Code section 190.3 provides that at the penalty phase of

a capital trial evidence may be presented as to any matter relevant to aggravation, mitigation, and sentence.

3. An account of the process of executing a person is relevant to the sentence and is necessary if the jury is to impose a constitutionally justified sentence.

4. To be constitutional, the death sentence must be proportional to the crime and the offender and serve the purposes of retribution and deterrence.

5. The jury here could not determine whether the death sentence was appropriate without knowledge of the specific nature of the contemplated sentence. The purpose of the proffered evidence was to convince the jury that the retributive and deterrent purposes would not be furthered by imposing the death penalty on petitioner.

6. The trial court's ruling precluded counsel from trying to so convince the jury and precluded counsel from vigorously so arguing to the jury.

7. The error was prejudicial because the resulting penalty determination was unreliable and the state cannot prove beyond a reasonable doubt that the exclusion of the proffered defense evidence had no effect whatever on the jury's penalty determination particularly because it would have constituted the only evidence presented on the nature of the sentence.

AA.

[Unconstitutionality of Statute]

The California death penalty law does not provide for (1) specific and objective enumeration of aggravating and mitigating factors to guide the jury; (2) a requirement of written findings on any aggravating factors found to be true; (3) a requirement that the prosecution prove the existence of any aggravating factors beyond a reasonable doubt; (4) a requirement of penalty jury unanimity regarding the presence of an aggravating factor found in support of the death judgment; (5) a requirement that the penalty jury determine

beyond a reasonable doubt and unanimously that the aggravating circumstances outweigh the mitigating circumstances and that death is the appropriate penalty beyond a reasonable doubt and (6) comparative appellate review to prevent inconsistency, arbitrariness, disproportionality, and discrimination.

The statute's mandatory formula ("if aggravating outweighs mitigation, you shall impose a sentence of death") creates a presumption of death, while the other features result in arbitrary and capricious imposition by the jury of the sentence of death and affirmance thereof by the California Supreme Court.

AB.

[Illegal Jail Monitoring]

Petitioner's First, Fifth, Sixth, Eighth, and Fourteenth Amendment rights to privacy, to the effective assistance of counsel, to competent expert assistance, to present a defense and to present mitigating evidence, to a fair trial and to a reliable guilt and penalty determination were violated by the state's monitoring of petitioner's conversations and sealed documents pertaining to his case.

The facts supporting this claim, among others to be presented after adequate funding, discovery and a hearing, are:

1. During trial, the prosecutor acknowledged that petitioner's jail conversations were monitored during the months petitioner was preparing for trial.

2. Jail personnel obtained confidential documents appointing a defense psychiatrist to assist counsel. The state learned an application for expert assistance had been made by counsel, in contravention of state law which provides that the fact of the application, as well as its contents, is to be confidential.

3. As a result of the breach of confidentiality concerning the mental health expert's appointment and identity, and as a result of the monitoring, he refused to provide

assistance because he was unwilling to talk to a defendant whose conversation was being monitored.

4. These violations of petitioner's constitutional rights deprived him of the effective assistance of his counsel and the ancillary services of a mental health professional. They were prejudicial. But for the breaches, such expert assistance would have been forthcoming.

WHEREFORE Petitioner prays that this Court:

5. Issue a writ of habeas corpus to have petitioner brought before it to the end that he might be discharged from his unconstitutional confinement and restraint and/or relieved of his unconstitutional sentence of death;

6. Conduct a hearing at which proof may be offered concerning the allegations in this Petition;

7. Permit petitioner, who is indigent, to proceed without prepayment of costs and fees, and appoint counsel to represent him;

8. Grant petitioner, who is indigent, sufficient funds to secure expert testimony necessary to prove the facts as alleged in this petition and to further investigate the facts in support of the claims alleged herein;

9. Grant petitioner the authority to obtain subpoenas in forma pauperis for witnesses and documents necessary to prove the facts alleged in this petition;

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10. Grant petitioner the right to conduct discovery;

11. Stay petitioner's execution pending final disposition of this petition; and

12. Permit petitioner to amend this petition to allege other bases for his unconstitutional confinement as such are discovered.

13. Grant such other and further relief as may be appropriate.

Dated: November 13, 1995

JERRY L. NEWTON
NORMAN D. JAMES

By: _____
Attorneys for Petitioner
STANLEY WILLIAMS

DECLARATION

I, Jerry L. Newton, declare and state as follows:

1. I am an attorney at law and a member of the Bar of this Court. The facts set forth in this declaration are known personally to me, and if called as a witness I could competently testify thereto.

2. On November 6, 1995, an order was entered appointing myself and Norman D. James, Esq. as attorneys of record for petitioner Stanley Williams. Copies of the order of appointment were received by both Mr. James and myself on November 9, 1995.

3. On November 10, 1995, Mr. James discussed the status of this petition with Bert H. Deixler, former counsel for Mr. Williams. Mr. Deixler advised Mr. James that he had prepared an amended petition for filing with this Court prior to being advised that new counsel was being appointed to represent Mr. Williams. The instant Amended Petition For Writ of Habeas Corpus By a Person In State Custody is the petition prepared by Mr. Deixler.

4. Mr. James and I have only had time to briefly familarize ourselves with the case and read the petition drafted by former counsel. However, based upon the discussion had with Mr. Deixler and others, it is our opinion that Mr. William's interests could be adversely affected if the petition is not filed immediately due to pending legislation which may be construed to negatively impact a petitioner's right to file an amended petition.

5. Based upon information and belief, I believe the contents of the petition are true.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 13th day of November, 1995 at Hermosa Beach, California.

JERRY L. NEWTON

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 53 Pier Avenue, 2nd Floor, Hermosa Beach, California 90254-3800. On November 13, 1995, I served the foregoing document described as: AMENDED PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY on all interested parties in this action:

____ By placing __ the original _X_ a true copy thereof enclosed in a sealed envelope addressed to:

SEE ATTACHED SERVICE LIST

Mail _X_ I deposited such envelope in the mail at Hermosa Beach, California. The envelope was mailed with postage thereon fully prepaid.

__ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on the same day with postage thereon fully prepaid at Hermosa Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed November 13, 1995, 1995

___. (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_X_ (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

JERRY L. NEWTON

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